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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/844,427	04/30/2001	David Gustafsson	3764-96	9839

7590 02/04/2003

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EXAMINER

STOCKTON, LAURA

ART UNIT

PAPER NUMBER

1626

DATE MAILED: 02/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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13

DATE MAILED:

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on November 20, 2002

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), ~~or thirty days~~, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- ☒ Claim(s) 1, 5-20, 28-30 and 32 are pending in the application.
- ☒ Of the above, claim(s) 1, 5-16, 20, 28-30 and 32 is/are withdrawn from consideration.
- ☒ Claim(s) 17-19 are allowed.
- ☐ Claim(s) are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement.

#### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- ☐ Notice of Reference Cited, PTO-852
- ☐ Information Disclosure Statement(s) PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

09/844,427

## DETAILED ACTION

Claims 1, 5-20, 28-30 and 32 are pending in the application.

### *Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 20, 2002 has been entered.

All other rejections made in the previous Office Action that do not appear below have been overcome. Therefore, arguments pertaining to these rejections that have been overcome will not be addressed.

*Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C.

112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 does not further limit claim 1 because the compounds of claim 17 are not embraced by claim 1 (see especially definitions of D<sup>1</sup> and D<sup>2</sup> in claim 17).

*Response to Arguments*

Applicants' arguments filed September 30, 2002 have been fully considered. In regard to the rejection of claim 17 (as well as claims 18 and 19 since they depend from claim 17) under 35 U.S.C. § 112, second paragraph, Applicants argue that claim 17 relates to compounds of

formula Ia and not to compounds of formula I of claim 1. Applicants argue that the compounds of formula Ia differ from the compounds of formula I. Applicants argue that the reference in claim 17 to claim 1 does not create a dependency and that claim 17 is independent of claim 1.

Applicants' arguments have been considered but have not been found persuasive. A claim that refers to another claim is considered a dependent claim. See M.P.E.P. 608.01(n). Therefore, since claim 17 refers to claim 1, claim 17 is a dependent claim. Any claim that is in dependent form should include every limitation of the claim on which it depends. Claim 17 fails to do so. Therefore, this rejection is maintained.

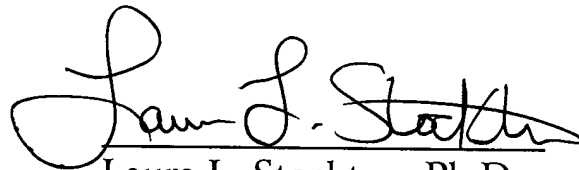
***Allowable Subject Matter***

Claims 1, 5-16, 20, 28-30 and 32 are allowed over the art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura L. Stockton whose telephone number is (703) 308-1875. The examiner can normally be reached on Monday-Friday from 6:00 am to 2:30 pm. If the examiner is out of the Office, the examiner's supervisor, Joseph McKane, can be reached on (703) 308-4537.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

A handwritten signature in black ink, appearing to read "Laura L. Stockton", written over a horizontal line.

Laura L. Stockton, Ph.D.

Patent Examiner

Art Unit 1626, Group 1620

Technology Center 1600

January 31, 2003